



SENATE BILL 159: Require Certain General Reappraisals

2013-2014 General Assembly

Committee: Senate Finance
Introduced by: Sens. Tarte, Rucho
Analysis of: First Edition

Date: March 25, 2013
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SUMMARY: *This bill would require counties to retroactively change appraisals valued during the county's last general reappraisal if certain conditions are met.*

[As introduced, this bill was identical to H200, as introduced by Reps. W. Brawley, Cotham, which is currently in House Government, if favorable, Regulatory Reform, if favorable, Finance.]

CURRENT LAW: Under current law, the value of real property must be appraised as of January 1 by the county at least once every 8 years. Unless another standard applies for limited circumstances, the value to be determined is the true value of the property, or the price at which the property would change hands between a willing and financially able buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of all the uses to which the property is adapted and capable of being used. With limited exceptions, this value must be used by the county until the county conducts its next general reappraisal, and property tax appraisals may not be changed for tax years other than the current tax year (retroactive changes), regardless of whether such changes are sought by the taxpayer from the assessor, the board of equalization and review, or the board of county commissioners.^[1] While G.S. 105-381 permits refunds or releases (which could result from lowered appraisals) if the tax in question was levied illegally or due to clerical error and while G.S. 105-394 permits retroactive changes to property tax records to correct "immaterial irregularities" in the listing, appraisal, levy, or collection process, neither provision likely authorizes retroactive changes to appraisals based on the alleged misjudgments of market value by the county.^[2]

BILL ANALYSIS: This bill would supersede the time limitations disallowing retroactive changes where the following conditions are met:

- The county has evidence that the majority of commercial neighborhoods possess significant issues of inequity.
- The county has evidence that instances of inequity or erroneous data had significant impact on the valuation of residential neighborhoods in the county.

^[1] (See G.S. 105-287(c) (any change in appraisals made in non-general-revaluation years may take effect in the current tax year only and not retroactively; G.S. 105-296(i) (changes made informally by the assessor prior to the first meeting of the Bd of E&R may affect only current-year appraisals); G.S. 105-322 (authorizes board of E&R to make changes as permitted by G.S. 105-287 and as needed to resolve timely filed appeals of current year's appraisals); G.S. 105-325 (authorizes board of county commissioners to make changes only to current-year appraisals).

^[2] Neither provision has been the subject of much litigation. The leading cases are *Ammons v. Wake County*, 127 N.C. App. 426 (1997), which makes clear that a misjudgment of market value under G.S. 105-381 cannot justify a refund under the "clerical error" standard but does not address the "levied illegally" standard, and *In re: Morgan*, 362 N.C. 339 (2008), which deals with immaterial irregularities. An argument that a misjudgment of market value was either an illegal tax or an immaterial irregularity would render the appeal deadline created by G.S. 105-322 unnecessary, and courts strive to avoid interpreting a statute in a manner that eliminates the relevance of another statute.



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- The county's last general reappraisal was performed in one of the years when the economic downturn most severely affected home prices (2008-2012).
- The county's evidence (i) resulted from a review performed by an appraisal service retained and selected by the county and registered with the Department of Revenue and (ii) resulted from a sample size of not less than 375 properties that were examined on site.

If all of the conditions are met, the county must undertake one of the two following options:

- The county must conduct a general reappraisal pursuant to G.S. 105-286 within 18 months with at least 1 appraiser certified by the Department for mass valuations per 4,250 parcels.
- The county must have a qualified appraisal service expand the county's evidence of inequity to cover the entire county.

Once one of the two options has been completed, the county must change the abstracts and tax records so that the assessed value reflects the true value for each tax year until the next general reappraisal required by G.S. 105-286. In making these changes, the county must prioritize significantly overvalued parcels first, significantly undervalued parcels second, other overvalued parcels third, and other undervalued parcels last, and, in making refunds, the governing board of the county (and city, where applicable), must direct that a notice of refund and the refund amount be sent to the owner of record as of the date the payment was made. For overvalued parcels, the county would be required to repay the overpayment with interest in the same manner as if the Board of Equalization and Review reduced a valuation on property resulting in an overpayment under G.S. 105-360. The interest rate for overpayments is 2% for the period 1/6 to 2/1 and is .75% for the period 2/1 until paid. For undervalued parcels, the additional taxes would be treated as taxes on discovered properties pursuant to G.S. 105-312, on which interest does not begin to accrue until the next calendar date of delinquency, which would be January 6th.

EFFECTIVE DATE: This bill would be effective when it becomes law and the provisions of the bill are severable.

BACKGROUND: In 2011, Mecklenburg County conducted a general reappraisal, which has been a source of controversy and debate. In response to a significantly higher rate of appeal and public criticism, the county commissioned a review of the reappraisal data. The resulting report indicated that many of the neighborhoods throughout the county had valuations that had either major or minor issues affecting the calculation.³

The report is available online at the following website:

<http://charmec.org/mecklenburg/county/AssessorsOffice/Pages/RevaluationReview.aspx>

The bill seeks to provide a remedy by conforming the previously established valuations to true or market values as of the date for which the reappraisal was to be effective coupled with a retroactive adjustment to tax liabilities. Laws amending property tax statutes must adhere to two North Carolina Constitutional provisions:

- Art. II, Sec. 24 of the NC Constitution prohibits local bills that "extend the time for the levy or collection of taxes or otherwise relieving any collector of tax from the due performance of his official duties."

³ For example, in the neighborhood review, the report indicated major or minor issues in 49 of 150 neighborhoods, and in the land increase neighborhood review, the report indicated major or minor issues in 38 of 52 neighborhoods.

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- Art. V, Sec. 2 of the NC Constitution requires that any "classification" of property for tax purposes "be made by general law uniformly applicable in every county, city, and town."

North Carolina courts have not addressed the question of whether a bill permitting or ordering the retroactive changing of property tax assessments in some (but not all) counties would violate either of these constitutional provisions. Although the bill addresses primarily a local issue and Mecklenburg County is the only county known to meet all of the conditions set forth in the bill, any county that conducted a revaluation between 2008 and 2012 can meet the bill conditions. A taxpayer or a county in the State may have standing to challenge a law that violated a Constitutional provision. It is unknown whether a court would find the bill to be local in nature or non-uniform.